

3.2 COMPENSATORY LEAVE

APPLICATION:

Full-time and part-time classified, and "at will" employees.

PURPOSE:

To provide eligible employees with paid leave as compensation for additional hours worked during specific times.

AUTHORITY, INTERPRETATION, AND REVISION:

This SOP, issued by the Virginia Department of Social Services (VDSS), is an adaptation of Policy 3.10 issued by the Virginia Department of Human Resource Management (VDHRM) pursuant to authority provided in Chapter 10, Title 2.1, of the Code of Virginia. The Director of the VDHRM is responsible for official interpretation of this policy, in accordance with Section 2.1-114.5 (13) of the Code of Virginia. The Director of the VDSS' Division of Human Resource Management (DHRM), or designee, is responsible for the agency's interpretation of this SOP and for its revision and rescission.

I. DEFINITIONS

A. Exempt Employee

An employee who is not subject to the overtime provisions of the Fair Labor Standards Act.

B. Non-Exempt Employee

An employee who is subject to the overtime provisions of the Fair Labor Standards Act.

II. PURPOSE OF COMPENSATORY LEAVE

A. Why Compensatory Leave

Compensatory leave is paid time off for an eligible employee having worked additional hours in a workweek; having worked on an official office closing day, a holiday, or a scheduled day off; or when a holiday falls on an employee's scheduled day off.

B. Use of Compensatory Leave

Accrued compensatory leave may be used to provide paid time off from work for any purpose.

III. ACCRUAL OF COMPENSATORY LEAVE

A. Rate of Accrual

Eligible employees earn compensatory leave on an hour-for-hour basis. Accordingly, an employee may earn one hour of compensatory leave for each hour that he/she is required to work for the reasons cited in Section II(A) above.

B. Duration of accrued compensatory leave

Accrued compensatory leave lapses within 12 months from the date it is earned. Thus, once lapsed, accrued compensatory leave may not be used or paid off upon an employee's change of status.

C. Exception to Duration for Certain Positions as a Retention Incentive

An agency may extend indefinitely the time employees have to use earned compensatory leave when the employees hold positions that have been identified by the agency as positions that are critical to the agency's mission and for which the agency has significant difficulty retaining qualified employees. (See Policy 3.05, Compensation, VDHRM Policy Manual.)

1. When an employee is transferred, promoted or demoted to a position that does not have the same designation, the employee's compensatory leave balances that were extended will lapse 12 months from the date of the status change, if they are not used before that date.
2. However, when an employee is transferred, promoted or demoted to a position that does not have the same designation, the agency may authorize payment for any compensatory balances that were extended but not used prior to the status change.

IV. HOW COMPENSATORY LEAVE IS CREDITED FOR NON-EXEMPT EMPLOYEES

A. Eligibility to Receive Compensatory Leave

A non-exempt employee is eligible to earn compensatory leave only when the hours worked in a workweek are 40 hours or less. If a non-exempt employee works more than 40 hours, the Overtime Leave Policy (Policy 3.15, VDHRM Policy Manual) applies.

EXAMPLE: A non-exempt employee who works ten hours on Monday, calls in sick on Tuesday, and works eight hours on Wednesday, Thursday, and Friday will receive two hours of compensatory leave for the extra hours worked on Monday, rather than overtime leave, because the employee did not actually work over 40 hours during the workweek.

B. Required by Management

To earn compensatory leave, a non-exempt employee must be required by the agency head or his/her designee to work:

1. additional hours in a workweek in which the employee has taken a holiday or leave, but has worked no more than 40 hours;
2. on an official office closing day if he or she is designated as an "essential employee";
3. on a holiday; or
4. on a scheduled day off.

NOTE: Non-exempt employees also will be credited with compensatory leave when a holiday falls on a scheduled rest day.

V. HOW COMPENSATORY LEAVE IS CREDITED FOR EXEMPT EMPLOYEES

A. Exempt Employee Will Receive Compensatory Leave

An exempt employee will earn compensatory leave when required by the agency head or his/her designee to work:

1. on an official office closing day if he or she is designated as an "essential employee"; or
2. on a holiday.

NOTE: Exempt employees will be credited with compensatory leave when a holiday falls on a scheduled rest day.

B. Other Times for Earning Compensatory Leave

Other times that an exempt employee will be awarded compensatory time will be rare. However, when an employee is required to work beyond his/her normal hours in connection with General Assembly assignments, he/she would be awarded compensatory time.

Other times would only be at the designation of the Commissioner as determined by the Human Resource Director Senior.

C. Meaning of “Required to Work”

1. The requirement to work additional hours must be specifically authorized by the agency head or his/her designee. General or “blanket authorizations” for an exempt employee to work beyond his/her regularly scheduled hours shall not be the basis for earning compensatory leave.
2. Additional work hours are intended only to relieve specific peak workload needs and shall not be authorized to provide for continuous workload requirements.
3. Additional work hours do not include extra hours that an exempt employee independently determines is necessary to carry out his/her job responsibilities.

VI. COMPENSATORY LEAVE MUST BE AUTHORIZED

An employee must have agency approval before earning compensatory leave.

A. In Writing

Compensatory leave must be authorized in writing by the agency head or his/her designee.

B. In Advance

Compensatory leave should be authorized before the employee works the hours that result in compensatory leave.

However, if emergency conditions exist which make it impossible to authorize compensatory leave before it is earned, written authorization should be prepared as soon as possible, thereafter.

VII. TREATMENT OF COMPENSATORY LEAVE UPON CHANGE OF STATUS

A. Payment When Leaving State Service

1. Full lump sum payment

An employee shall be paid in a lump sum for his/her accrued compensatory leave when the employee:

- a.** leaves state service by resignation, retirement, layoff, termination, death; or
- b.** is transferred, promoted, or demoted from one state agency to another.

2. Payment upon employee's death

Payment upon an employee's death shall be made to the Administrator or the Executor/Executrix. If there is no Administrator or Executor of the employee's estate, payment shall go to the surviving spouse, or if none, to the next of kin in accordance with Section 64.1-123 of the Code of Virginia. Payment may be held for 60 days.

B. Partial Payment When Changing From Full-Time to Part-Time Classified

- 1.** An employee who changes from full-time to part-time employment for a period greater than three months shall be paid in a lump sum for the portion of his/her accrued compensatory leave that is proportionate to the reduction in the employee's hours.

EXAMPLE: An employee who worked 40 hours during full-time employment changes to a part-time schedule working 20 hours, or half the former schedule. The employee receives a lump sum payment of half of the maximum amount of the accrued compensatory leave.

- 2.** If an employee changes from full-time to part-time for less than three months, the employee cannot use the portion of his/her

accrued leave that is proportionate to the number of hours that the employee is no longer working per week, until the employee resumes full time employment.

EXAMPLE: The same employee described in the example above may use only half of his/her accrued leave while working part-time, but may use the full amount when the employee returns to full-time employment.

C. Payment Optional When Other Changes in Status

Agencies may allow employees to retain their accrued compensatory leave, or such leave may be paid in a lump sum when employees are:

1. placed on voluntary leave without pay (not layoff) for at least three months; or
2. transferred from a covered to a non-covered position.

D. Retention of Accrued Compensatory Leave

When an employee is transferred, promoted, or demoted to another classified position within the same agency, the employee will retain his/her accrued compensatory leave.

E. Use of Accrued Compensatory Leave When on Military Leave Without Pay

An employee on military leave without pay may use his/her accrued compensatory leave to cover periods of unpaid absence for military duty.